

PATRICK C. MCGARRIGLE, ESQ., SBN 149008
MICHAEL J. KENNEY, ESQ., SBN 192775
PHILIP A. ZAMPIELLO, ESQ., SBN 198723
McGARRIGLE, KENNEY & ZAMPIELLO, APC
9600 Topanga Canyon Boulevard, Suite 200
Chatsworth, California 91311
PH: (818) 998-3300 FAX: (818) 998-3344

Attorneys for Judgment Creditor
Kenneth Barton

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

RMAIL LIMITED,

Plaintiff,

v.

AMAZON.COM, INC., et al.,

Defendants.

Civil Action No.: 2:10-CV-258-JRG
(And Related Cases)

**JUDGMENT CREDITOR KENNETH
BARTON'S OPPOSITION TO
RPOST HOLDINGS, INC., ET AL.'S
OPPOSED MOTION TO STRIKE
KENNETH BARTON'S
OPPOSITION TO MOTION FOR
RECONSIDERATION**

AND RELATED CASES

Judgment Creditor Kenneth Barton ("**Barton**") opposes the Motion of Plaintiffs RMail Limited ("**RMail**"), RPost Communications ("**RComm**") and their (purported) licensee, RPost Holdings, Inc. ("**RHI**") (collectively, the "**RPost Parties**") to strike Mr. Barton's Opposition to the RPost Parties' (since denied) Motion for Reconsideration

1 regarding this Court Stay Order and Administrative Closure Order (the “**Closure Order**”).
2 The RPost Parties’ Motion to Strike should be denied.

3 The RPost Parties are right about just two things – Mr. Barton is not a named party
4 to the instant lawsuit and was not a party to the RPost Parties’ meritless Reconsideration
5 Motion. However, what the RPost Parties conveniently overlook is their (and their
6 counsel’s) responsibilities under F.R.C.P. Rule 11 – that the factual representations they
7 make in their filings “have evidentiary support” (F.R.C.P. Rule 11(b)(3)) – which preclude
8 the submission of false statements to this Court. Hoping to take advantage of Mr. Barton
9 not being a party, however, the RPost Parties thought they could circumvent their Rule 11
10 obligations by making, with seeming impunity, false statements regarding the nature and
11 scope of Mr. Barton’s UFTA claims and remedies and then convince this Court to make
12 findings here based on the RPost Parties’ false statements (which findings they can then
13 attempt to utilize in the California state and Federal litigation). When Mr. Barton’s
14 counsel (who filed and is prosecuting the UFTA action in California) reviewed the RPost
15 Parties’ Reply re: the Reconsideration Motion, it was patently clear that the RPost Parties
16 had violated their Rule 11 obligations and were deliberately misrepresenting Mr. Barton’s
17 UFTA claims and remedies to try and convince this Court to reverse its prior rulings. As
18 an Officer of the Court, Mr. Barton’s counsel would have been remiss *not to* bring the
19 RPost Parties’ deliberate ruse to this Court’s attention (Mr. Barton’s Opposition cited the
20 Reply’s multiple false “factual contentions” and demonstrated where, based on the UFTA
21 Complaint, the RPost Parties’ statements were materially false). That the RPost Parties’
22 false “factual contentions” in their Reply papers were filed after the date that an Opposition
23 (to their Reconsideration Motion) would have been due by Mr. Barton (if the Motion had
24 been directed to him) is a red herring and no excuse for violating Rule 11 by knowingly
25 advancing false factual contentions. What the RPost Parties are saying by their Motion is
26 that they do not want anyone exposing their false statements to this Court and want to
27 ensure that any record of their sham factual assertions being exposed is stricken so no other
28 Court or litigant will learn of this duplicitous practice of the RPost Parties. Such is not

1 good cause for an order striking Mr. Barton's filing.

2 In short, the RPost Parties have embarked upon a campaign to both (a) misrepresent
3 the nature and extent of Mr. Barton's UFTA claims and remedies at issue (and which
4 concern all of the RPost International Limited assets (including all patents, not just the '219
5 and '334 patents, and these pending actions)) and (b) conceal from other Courts and the
6 myriad litigants the pattern and practice of the RPost Parties (and their principals and
7 representatives) to knowingly make false statements to this (and other) Courts. **The**
8 **RPost Parties' Motion here perpetuates the very circumstances which led to the**
9 **Court's initial stay order in August 2013 and, later, the Closure Order.** The RPost
10 Parties have had no difficulty saying one thing to one Court and concealing other material
11 facts from other Courts – the concealment (a) from this Court of the intentional fraud
12 findings of the Los Angeles Superior Court against Messrs. Khan and Tomkow (including
13 corporate record forgery and fabrication to steal approximately 19% of the equity of the
14 RPost Parties' enterprise from Mr. Barton), (b) from this Court of the Chapter 13 (later
15 converted to Chapter 7) cases filed by Khan and Tomkow in US Bankruptcy Court in Los
16 Angeles, (c) from the Bankruptcy Trustees and Bankruptcy Court in Los Angeles of the
17 financial terms of the settlements of the *Amazon*, *PayPal* and *Zix* cases, and (d) from this
18 Court of the shareholder derivative notices and claims and, then, lawsuits filed against
19 Khan/Tomkow and various RPost Parties, among others. The continuing effort by the
20 RPost Parties to play fast and loose with facts and disclosures is only perpetuated by their
21 instant Motion, which should be denied.

22 Mr. Barton's UFTA claims are, as this Court has held, inextricably intertwined to
23 the underlying issues in the instant Eastern District of Texas Litigation involving the RPost
24 Parties. If the RPost Parties are going to make factual contentions to this Court, they are
25 duty bound to make accurate and truthful statements; failing to do so, the RPost Parties
26 come to this Court with unclean hands and without good cause for the order sought by this
27 Motion. Having chosen not to address and rebut the clearly false statements they made to
28 the Court in the Reply papers concerning the Reconsideration Motion, Mr. Barton suggests

1 that they should not be able to do so for the first time on reply here. Mr. Barton
2 respectfully requests that the instant Motion be denied and the RPost Parties' – at the very
3 least – admonished for the false statements advanced in their Reply papers.

4 Mr. Barton respectfully requests that the Motion to Strike be denied.

5
6 Date: April 28, 2014

McGARRIGLE, KENNEY & ZAMPIELLO, APC

7 By: 

Patrick C. McGarrigle, Esq.

Michael J. Kenney, Esq.

Attorneys for Judgment Creditor

Kenneth Barton

CERTIFICATE OF SERVICE

I certify that all parties of record who are deemed to have consented to electronic service are being served a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on this 28th day of April, 2014.

/s/ Patrick C. McGarrigle